

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2021

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SENATE BILL 114

House Committee Substitute Favorable 3/18/21

Short Title: DES COVID Modifications and Technical Changes.

(Public)

Sponsors:

Referred to:

February 22, 2021

1 A BILL TO BE ENTITLED

2 AN ACT TO PROVIDE 2021 COVID-19 RELIEF MEASURES FOR EMPLOYERS AND
3 CLAIMANTS UNDER THE UNEMPLOYMENT INSURANCE SYSTEM, TO REDUCE
4 THE SUTA TAX RATE FOR 2021, AND TO MAKE TECHNICAL AND CLARIFYING
5 CHANGES REQUESTED BY THE DIVISION OF EMPLOYMENT SECURITY.

6 The General Assembly of North Carolina enacts:

7 **SECTION 1.** Article 2C of Chapter 96 of the General Statutes is amended by adding
8 a new section to read:

9 "§ 96-14.16. Emergency unemployment benefits and tax rate reduction to respond to the
10 coronavirus emergency of 2021.

11 (a) Extended Benefit Period. – With respect to determining whether the State is in an
12 extended benefits period beginning November 1, 2020, through December 31, 2021, the State
13 shall disregard the requirement in G.S. 96-14.14(b)(3) that no extended period may begin before
14 the fourteenth week following the end of a prior extended benefit period which was in effect with
15 respect to this State.

16 (b) Deferral of Regular Unemployment Compensation Payment. – The purpose of this
17 subsection is to elect the option by which the State will coordinate the PEUC and regular
18 unemployment compensation programs for individuals who meet the four criteria to be paid
19 PEUC, as required by the Unemployment Insurance Program Letter 17-20, Change 2, issued by
20 the U.S. Department of Labor on December 31, 2020. The State elects option one, which requires
21 an individual whose benefit year has expired to file a regular unemployment initial claim in a
22 new benefit year but defers payment of the new regular unemployment compensation claim until
23 the individual's PEUC claim has been exhausted or the PEUC program has expired, whichever
24 occurs first. For purposes of this subsection, "PEUC" means the Pandemic Emergency
25 Unemployment Compensation program.

26 (c) Tax Rate Reduction. – For the calendar year 2021, the base contribution rate
27 determined under G.S. 96-9.2(c) for an experience-rated employer will remain at one and
28 nine-tenths percent (1.9%).

29 (d) Applicability. – This section applies for unemployment benefits filed for periods
30 beginning on or after March 10, 2020, and expires for unemployment benefits filed for periods
31 beginning on or after the earlier of the following: (i) the date the Governor signs an executive
32 order rescinding Executive Order No. 116, Declaration of a State of Emergency to Coordinate
33 Response and Protective Actions to Prevent the Spread of COVID-19, or (ii) December 31,
34 2021."

35 **SECTION 2.** G.S. 96-14.14(a) reads as rewritten:



1 "(a) [General Provisions.] General Provisions. – Extended benefits payable under
2 sub-subdivision (b)(5)a. of this section shall be paid as required under the Federal-State Extended
3 Unemployment Compensation Act of 1970. Extended benefits payable under ~~sub-subdivision~~
4 ~~(b)(5)a.~~ ~~sub-subdivisions~~ (b)(5)b. and (b)(5)c. of this section are not required under federal law
5 and may be paid only if the federal government funds one hundred percent (100%) of the costs
6 of providing them. Extended benefits are payable in the manner prescribed by this section."

7 **SECTION 3.** G.S. 96-14(b) reads as rewritten:

8 "(b) Partial Weekly Benefit Amount. – The weekly benefit amount for an individual who
9 is partially unemployed or part-totally employed is the amount the individual would receive
10 under subsection (a) of this section if the individual were totally unemployed, reduced by the
11 amount of any wages earned by the individual ~~receives~~ in the benefit week in excess of twenty
12 percent (20%) of the benefit amount applicable to total unemployment. If the amount so
13 calculated is not a whole dollar, the amount must be rounded to the next lower whole dollar.
14 Payments received by an individual under a supplemental benefit plan do not affect the
15 computation of the individual's partial weekly benefit."

16 **SECTION 4.** G.S. 96-15(c) reads as rewritten:

17 "(c) Appeals. – Unless an appeal from the adjudicator is withdrawn, an appeals referee or
18 hearing officer shall set a hearing in which the parties are given reasonable opportunity to be
19 heard. The conduct of hearings shall be governed by suitable rules adopted by the Division. The
20 rules need not conform to common law or statutory rules of evidence or technical or formal rules
21 of procedure but shall provide for the conduct of hearings in such manner as to ascertain the
22 substantial rights of the parties. The hearings may be conducted by conference telephone call or
23 other similar means provided that if any party files with the Division prior written objection to
24 the telephone procedure, that party will be afforded an opportunity for an in-person hearing at
25 such place in the State as the Division by rule shall provide. The hearing shall be scheduled for
26 a time that, as much as practicable, least intrudes on and reasonably accommodates the ordinary
27 business activities of an employer and the return to employment of a claimant. The appeals
28 referee or hearing officer may affirm or modify the conclusion of the adjudicator or issue a new
29 decision in which findings of fact and conclusions of law will be set out or dismiss an appeal
30 when the appellant fails to appear at the appeals hearing to prosecute the appeal after having been
31 duly notified of the appeals hearing. The evidence taken at the hearings before the appeals referee
32 shall be recorded and the decision of the appeals referee shall be deemed to be the final decision
33 of the Division unless within 10 days after the date of notification or mailing of the decision,
34 whichever is earlier a written appeal is filed pursuant to such rules as the Board of Review and
35 the Division may adopt. No person may be appointed as an appeals referee or hearing officer
36 unless he or she possesses the minimum qualifications necessary to be a staff attorney eligible
37 for designation by the Division as a hearing officer under G.S. 96-4(q). No appeals referee or
38 hearing officer in full-time permanent status may engage in the private practice of law as defined
39 in G.S. 84-2.1 while serving in office as appeals referee or hearing officer; violation of this
40 prohibition shall be grounds for removal. Whenever an appeal is taken from a decision of the
41 appeals referee or hearing ~~officer;~~ officer, the appealing party shall submit a clear written
42 statement containing the grounds for the appeal within the time allowed by law for taking the
43 appeal, and if such timely statement is not submitted, the Board of Review may dismiss the
44 appeal."

45 **SECTION 5.** G.S. 96-15(f) reads as rewritten:

46 "(f) Procedure. – The manner in which disputed claims shall be presented, the reports
47 thereon required from the claimant and from employers, and the conduct of hearings and appeals
48 shall be in accordance with rules adopted by the Division for determining the rights of the parties,
49 whether or not such ~~regulations~~ rules conform to common-law or statutory rules of evidence and
50 other technical rules of procedure.

1 All testimony at any hearing before an appeals referee upon a disputed claim shall be recorded
2 unless the recording is waived by all interested parties. If the testimony is recorded, it need not
3 be transcribed unless the disputed claim is further appealed and, one or more of the parties
4 objects, under such rules as the Division may adopt, to being provided a copy of the tape
5 recording of the hearing. Any other provisions of this Chapter notwithstanding, any individual
6 receiving the transcript shall pay to the Division such reasonable fee for the transcript as the
7 Division may by ~~regulation~~ rule provide. The fee so prescribed by the Division for a party shall
8 not exceed the lesser of sixty-five cents (65¢) per page or sixty-five dollars (\$65.00) per
9 transcript. The Division may by regulation provide for the fee to be waived in such circumstances
10 as it in its sole discretion deems appropriate but in the case of an appeal in forma pauperis
11 supported by such proofs as are required in G.S. 1-110, the Division shall waive the fee.

12 The parties may enter into a stipulation of the facts. If the appeals referee, hearing officer, or
13 other employee assigned to make the decision believes the stipulation provides sufficient
14 information to make a decision, then the appeals referee, hearing officer, or other employee
15 assigned to make the decision may accept the stipulation and render a decision based on the
16 stipulation. If the appeals referee, hearing officer, or other employee assigned to make the
17 decision does not believe the stipulation provides sufficient information to make a decision, then
18 the appeals referee, hearing officer, or other employee assigned to make the decision must reject
19 the stipulation. The decision to accept or reject a stipulation must occur in a recorded hearing."

20 **SECTION 6.(a)** G.S. 96-15(h) reads as rewritten:

21 "(h) Judicial Review. – A decision of the Board of Review becomes final 30 days after the
22 date of notification or mailing of the decision, whichever is earlier, unless a party to the decision
23 seeks judicial review as provided in this subsection. Judicial review is permitted only after a party
24 claiming to be aggrieved by the decision has exhausted the remedies provided in this Chapter
25 and has filed a petition for review in the superior court of the county in which the petitioner
26 resides or the county in which the petitioner's principal place of business is located. The petition
27 for review must explicitly state what exceptions are taken to the decision or procedure and what
28 relief the petitioner seeks. Within 10 days after the petition is filed with the court, the petitioner
29 must serve copies of the petition by personal service or by certified mail, return receipt requested,
30 upon the Division and upon all parties of record to the Division proceedings. The Division must
31 furnish the petitioner, upon request, the names and addresses of the parties upon
32 request, as found in the records of the Division. The Division is a party to any judicial action
33 involving any of its decisions and may be represented in the judicial action by any qualified
34 attorney who has been designated by it for that purpose. Any questions regarding the
35 requirements of this subsection concerning the service or filing of a petition shall be determined
36 by the superior court. Any party to the Division proceeding may become a party to the review
37 proceeding by notifying the court within 10 days after receipt of the copy of the petition. Any
38 person aggrieved may petition to become a party by filing a motion to intervene as provided in
39 G.S. 1A-1, Rule 24.

40 Within 45 days after receipt of the copy of the petition for review or within such additional
41 time as the court may allow, the Division must transmit to the reviewing court the original or a
42 certified copy of the entire record of the proceedings under review. With the permission of the
43 court the record may be shortened by stipulation of all parties to the review proceedings. Any
44 party unreasonably refusing to stipulate to limit the record may be taxed by the court for the
45 additional cost incurred by the refusal. The court may require or permit subsequent corrections
46 or additions to the record when the court considers the changes desirable."

47 **SECTION 6.(b)** This section becomes effective June 1, 2021, and applies to
48 decisions made on or after that date.

49 **SECTION 7.** Except as otherwise provided, this act is effective when it becomes
50 law.